

REMARKS

Subject to the Examiner's entry of the amendments to the claims herein, claims 1-3, 5-18 and 20-47 are pending in the application. In the above Office Action the Examiner has rejected claims 1-3, 5-18 and 20-38. By this Amendment Applicant has amended claims 1, 2, 7, 11, 12, 17, 18, 22, 26, 31, 32, 34 and 35 and has added new claims 39-47, in the manner discussed below.

Claim Rejections Under 35 U.S.C. §112

The Examiner has rejected claims 1-3, 5-18, and 20-38 under 35 U.S.C. §112, second paragraph, as being vague and indefinite. In this regard the Examiner has indicated that the preamble of the above claims renders the claims unclear in view of the nature of the claim elements following the preamble. By this amendment Applicant has amended the preamble to more particularly specify the applicability of the pending claims to a method for providing business strategy recommendations to a service provider. Given that the amended preamble complements and provides appropriate context for the amended elements of the body of the claims, Applicant respectfully requests that the Examiner reconsider this aspect of the rejection under 35 U.S.C. §112.

The Examiner has also indicated that confusion arises from use within the claims of the terms "transaction record", evaluation data" and "correlating information from the unique transaction record and evaluation data". By this Amendment Applicant has endeavored to clarify the relationship between and among the claimed transaction record, transaction identifier, evaluation data and correlated transaction file.

Accordingly, Applicant respectfully requests reconsideration of the outstanding rejection under 35 U.S.C. §112.

First Rejection Under 35 U.S.C. §103(a)

The Examiner has rejected claims 1-3, 6-16, 17-18, 20-30, and 31-38 under 35 U.S.C. §103(a) as being unpatentable over D'Alessandro in view of Riordan et al. or vice versa.

D'Alessandro System

D'Alessandro describes a system for providing assessments of the performance of an organization based on predetermined criteria. The system includes a telecommunications infrastructure administered by a survey administrator. Employees or non-employees of a company or other organization to be evaluated log on to the system and answer a plurality of questions relating to various aspects of the business entity's operations. Information may be provided to the system via the Internet, through touch-tone telephone systems, or through other conventional information conduits. The collected data is stored in a database and subsequently analyzed by the survey administrator for evaluation and forecasting of the business entity's performance.

In general, the D'Alessandro system is configured to obtain information from employees or other respondents associated with an organization in order to gauge their perception of various aspects of the organization. The collected information is then compiled and provides the basis upon which the organization is evaluated:

"The system obtains information from individual employees or other respondents regarding their perception of performance criteria existing in the workplace. This is accomplished by utilizing a performance criteria survey. This survey is administered and controlled by a survey administrator denoted 20. The survey data is obtained by a data-gathering interface 70. The data-gathering interface may comprise a variety of telecommunication mediums which may include touch-tone telephone systems, hypertext language format ("HTML") Internet web servers, client-server wide area networks ("WANs") or local area networks ("LANs"). Data-gathering interface 70 acts as a conduit to receive survey data 90 in response to a plurality of predetermined survey questions. Each question contains several important aspects of a business function linked to vital performance abilities of the organization.

The results of the survey are stored in a database 100 for a baseline analysis of performance criteria and may also be used longitudinally in later intervals of time. Prior survey data from prior years 110 and 120 may be archived by the survey administrator 20 and later utilized as a base-line reference to the current

evaluation of the organization. Once a requisite number of respondents or all respondents complete surveys, an analysis 140 is performed on the survey data 90 by the survey administrator 20 and then communicated back to the organization 10.

[5:44-6:2]

Accordingly, D'Alessandro describes a system in which survey data relating to the perception of performance abilities of an organization is reported over time, analyzed, and the results communicated back to the organization. The questions giving rise to the survey data relate to "important aspects of a business function linked to vital performance abilities of the organization", and are independent of any particular transaction involving the organization.

Riordan System

Riordan describes a method and system for collecting and processing marketing data relating to the identification, quantity and price of items purchased. The system of Riordan includes a point-of-sale computer operative to transmit the amount of each sale to a credit authorization system for authorization of the sale. The information transferred within the Riordan system appears to be generally limited to product information such as, for example, the type and quantity of goods purchased. Moreover, the purchaser in Riordan communicates only with a merchant's point of sale (POS) computer, and is hence incapable of communicating with an evaluation processor or similar system component:

Customer terminal 105 and POS computer 120 are adapted to permit communication therebetween via the internet.

[3:19-20]

In other embodiments, customer computer 105 may be connected to POS computer 120 via a direct dial connection.

[3:36-37]

An electronic invoice is created from the information collected by the POS computer, and this invoice is transmitted to a credit authorization location. The invoice is then forwarded to a data warehouse, which stores it along with the information from other invoices in order to enable searching and analysis of the collected market data.

Distinguishing Features of the Present Invention

As defined by the pending claims, the present invention pertains in one aspect to a method for providing business strategy recommendations to a service provider. In one aspect the inventive method includes the service provider providing, to an automated evaluation processor, a unique transaction record representative of a transaction involving the service provider. Consistent with this aspect of the invention, at least one service evaluator is disposed to provide, to the evaluation processor, evaluation data specific to the transaction. In this regard the evaluation data contains a unique transaction identifier of the service provider corresponding to the unique transaction record. The evaluation processor correlates information from the unique transaction record and the evaluation data to produce a correlated transaction file. The method further includes providing at least one business strategy recommendation to the service provider based upon the correlated transaction file.

In the above Office Action the Examiner has characterized D'Alessandro in part as follows:

As for independent claim 1, D'ALESSANDRO fairly discloses a method for providing information to an organization having at least one manager, comprising:

...

(c) the evaluation processor analyzed and evaluated the survey data to evaluate the performance of the organization using a selected formula or business performance model (correlation) to produce a final compiled file (result), wherein the organization staff or manager can access the file from the evaluation process {see c3:25-40, c5:60-67, c6:1-5}.

...

Therefore, D'ALESSANDRO fairly teaches the claimed invention except for (a) wherein the organization (service provider) provides a unique transaction record to the automated evaluation processor along with the customer supplying the data to the evaluation processor for evaluation.

Applicant respectfully submits that the Examiner's characterization of D'Alessandro appears to be inherently contradictory in asserting that D'Alessandro describes the claimed "correlation" but fails to provide a unique transaction record. Specifically, the correlation operation contemplated by independent claims 1, 17 and 31 reads as follows:

the evaluation processor correlating information from the unique transaction record and the evaluation data to produce a correlated transaction file; Since it is clear from the above that the correlation operation involves the transaction record, Applicant respectfully submits that D'Alessandro cannot describe correlation within the meaning of the pending claims if D'Alessandro does not provide a transaction record. Accordingly, Applicant respectfully requests reconsideration of this aspect of the outstanding rejection.

As indicated above, the Examiner acknowledges that D'Alessandro fails to teach provision by the service provider of a unique transaction record to the evaluation processor. This omission in the teaching of D'Alessandro is, according to the Examiner, provided by Riordan; specifically, the Examiner asserts that Riordan "discloses the collection of a unique transaction record of the consumer by the organization (merchant) and providing these data to an automated evaluation processor". However, even if Riordan in fact describes a merchant's collection of evaluation data, this does not correspond to the claimed provision by the service evaluator of evaluation data to the evaluation processor by way of communication between the service evaluator and evaluation processor:

the at least one service evaluator engaging in communication with the evaluation processor in order to provide to the evaluation processor evaluation data specific to the transaction

As noted above, the purchaser in Riordan communicates only with a merchant's point of sale (POS) computer and does not engage in communication with an evaluation processor or the like.

Also with reference to independent claims 1, 17 and 31, Riordan further fails to describe a transaction record having a unique transaction identifier "of the service provider". Instead, Riordan describes a transaction record oriented around the credit card number of the purchaser, which is neither unique (i.e., multiple transactions could involve the same credit card) nor "of the service provider":

The electronic invoice contains line item data for each item purchased as part of the transaction. The invoice is organized around the identification number of the

payment vehicle employed by the customer to pay for the transaction, thus linking the purchasing information contained in the invoice to a particular consumer.
[2:21-27]

Although for the reasons discussed above pending claims 1, 17 and 31 appear to be distinguishable from the combination of D'Alessandro and Riordan, the claims have nonetheless been amended to recite that at least one business strategy recommendation is provided to the service provider based upon the correlated transaction file. It is further recited that the at least one business strategy recommendation identifies at least one recommended improvement strategy capable of being implemented by the service provider. This aspect of the present invention is described in the specification as follows:

Analysis and recommendation process 1600 correlates the information stored on survey results database 600 and correlates such information with the report requirements for the specific service provider. Based on client specific thresholds, a selected report or recommendation is generated and stored on applied recommendation database 1700 for subsequent processing by recommendation reporting/presentation process 1800 and for later access or retrieval by the management of the service provider as part of the selected service provider information. Different reports may be generated by recommendation reporting/presentation process 1800 which report or strategy may vary on the goals and/or thresholds of the service provider. The service provider has the ability to set or reset goals to cause the generation of differing improvement strategies for various thresholds selected by the service provider.

Survey data analysis and recommendation process 1600 may additionally obtain from transaction database 300 a record that has been entered within a specified time and that contains a transaction, the service provider, the unique service evaluator identifier for correlation with the information of the service evaluator which then enable employee specific evaluation reports and recommendations on employee training, goal setting, employee incentive, and methods by which the employee may improve service, which then become selected service provider information.

[9:17-10:5, emphasis added]

Applicant respectfully submits that that neither D'Alessandro nor Riordan describes or suggests (i) providing recommendations regarding business strategy based upon a correlated transaction file or the evaluation data included therein, or (ii) generating recommendations based upon parameters or thresholds supplied by the service provider (see, e.g., claims 2, 7, 18 and 32).

Accordingly, Applicant respectfully requests that the Examiner reconsider the outstanding rejection of claims 1-3, 6-16, 17-18, 20-30, and 31-38 under 35 U.S.C. §103(a) as being unpatentable over D'Alessandro in view of Riordan et al. or vice versa.

Second Rejection Under 35 U.S.C. §103(a)

The Examiner has also rejected claims 12, 26 and 34 under 35 U.S.C. §103(a) as being unpatentable over D'Alessandro in view of Riordan et al. or vice versa, and further in view of Remler or Fuerst. Because neither Remler nor Fuerst supplements the deficiency of the teachings of D'Alessandro and Riordan with regard to the invention defined by pending independent claims 1, 17 and 31, Applicant respectfully requests reconsideration of the outstanding rejection of dependent claims 12, 26 and 34 under 35 U.S.C. §103(a).

Third Rejection Under 35 U.S.C. §103(a)

The Examiner has also rejected claims 6, 8, 10-11 and 20, 22-24 under 35 U.S.C. §103(a) as being unpatentable over D'Alessandro in view of Riordan et al. or vice versa, and further in view of Kesel. Because Kesel does not supplement the deficiency of the teachings of D'Alessandro and Riordan with regard to the invention defined by pending independent claims 1 and 17, Applicant respectfully requests reconsideration of the outstanding rejection of dependent claims 6, 8, 10-11 and 20, 22-24 under 35 U.S.C. §103(a).

New Claims

New Claims 39-47 have been added to more specifically highlight several aspects of the invention. For example, independent claim 39 explicitly indicates that transaction information representative of transactions involving the service provider and one or more service evaluators is received by the automated evaluation processor. In addition, independent claim 44 explicitly recites that one of the transaction records is matched to the evaluation data. Claim 44 further recites that at least one business strategy recommendation is provided to the service provider based upon the evaluation data and the transaction data.

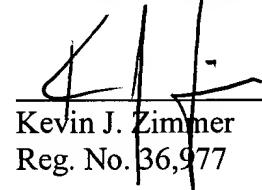
Applicant respectfully requests consideration of the remarks herein prior to further examination of the above-identified application. The undersigned would of course be available to discuss the present application with the Examiner if, in the opinion of the Examiner, such a discussion could lead to resolution of any outstanding issues.

Dated: June 15, 2005

Cooley Godward LLP
ATTN: Patent Group
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Tel: (650) 843-5000
Fax: (650) 857-0663

By:

Respectfully submitted,
COOLEY GODWARD LLP


Kevin J. Zimmer
Reg. No. 36,977

456772 v1/SD
9sg4011.DOC